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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 AMERICAN STRATEGIC INSURANCE
8 CORP.,

9 Plaintiff,

10 v.

11 YOLANDA T. DYESS,

12 Defendant.

Case No. 2:18-cv-00107-KJD-GWF

ORDER

13 Three motions are pending before the Court: two motions to strike (#5, #19) filed by
14 Plaintiff American Strategic Insurance and a motion to dismiss filed by Defendant Yolanda
15 Dyess (#9). Ms. Dyess opposes the motions to strike (#21). Likewise, American Strategic
16 opposes Ms. Dyess's motion to dismiss (#14). However, after reviewing American Strategic's
17 complaint, the Court determines that it does not have subject matter jurisdiction over its claims.
18 Accordingly, the Court dismisses the complaint and denies all pending motions as moot.

19 **I. Background**

20 In this insurance-coverage dispute, American Strategic seeks a declaratory judgment that
21 it is not obligated to provide a defense or otherwise indemnify Ms. Dyess in a corresponding
22 state-court defamation case. In September 2014, American Strategic issued Ms. Dyess a
23 homeowner's insurance policy. The policy was valid for one year and indemnified Ms. Dyess up
24 to \$300,000 for each covered occurrence. During the coverage period, Ms. Dyess made
25 disparaging statements about the local Laborers' Union. The Las Vegas Review Journal
26 published those comments in a July 2015 article. See James Dehaven, Vegas discrimination
27 lawsuit could be headed to arbitration, L.V. Rev. J. (July 5, 2015 9:39 P.M.). Following
28 publication, the Union sued Ms. Dyess for defamation and intentional infliction of emotional

1 distress in state court.

2 Ms. Dyess failed to answer the Union’s complaint or otherwise participate in the suit
3 causing that court to enter default judgment against her. Three months later, Ms. Dyess notified
4 American Strategic—for the first time—that she had been sued and was subject to a default
5 judgment. American Strategic promptly retained counsel on Ms. Dyess’s behalf subject to a
6 reservation of rights. Ms. Dyess’s counsel moved to set aside the default. The state court refused,
7 however, citing Ms. Dyess’s inordinate delay and overall failure to participate. American
8 Strategic then brought this suit seeking a declaration that, for various reasons, the homeowner’s
9 policy does not require American Strategic to continue to defend or otherwise indemnify Ms.
10 Dyess in state court. Ms. Dyess has seemingly learned her lesson from her default in state court
11 and has, to date, filed what purports to be an answer to the complaint and a motion to dismiss.
12 She has also filed numerous unrelated documents and notices that American Strategic has moved
13 to strike.

14 **II. Analysis**

15 The question here is whether the terms of Ms. Dyess’s 2014 homeowner’s policy requires
16 American Strategic to defend and/or indemnify her in the state court defamation proceeding.
17 American Strategic argues that the 2014 policy does not obligate it to defend or indemnify Ms.
18 Dyess because her policy did not contemplate coverage for defamation claims or the reputational
19 injury associated with such cases. Even if it did, American Strategic contends, Ms. Dyess’s delay
20 in disclosing the suit so prejudiced American Strategic’s defense that it should no longer be
21 required to defend her. And so, American Strategic asks the Court for a judicial declaration that
22 Ms. Dyess’s state-court case indeed falls outside the scope of a covered occurrence under the
23 policy.

24 Before the Court reaches the merits of these claims, it must first determine whether there
25 is jurisdiction over this dispute. The Court must have jurisdiction at all stages of the litigation.
26 See Grupo Data Flux v. Atlas Global L.P., 541 U.S. 567, 593 (2004). Where there is not
27 jurisdiction, the Court is under a “continuing duty to dismiss [the] action.” Augustine v. United
28 States, 704 F.2d 1074, 1077 (9th Cir. 1983). Because a federal court is a court of limited

1 jurisdiction, it is presumed to lack jurisdiction unless the parties demonstrate otherwise. Stock
2 West, Inc. v. Confederated Tribes of Colville Reservation, 873 F.2d 1221, 1225 (9th Cir. 1989).
3 The Court’s authority to hear cases rests on constitutional and statutory grants of jurisdiction.
4 Steel Co. v. Citizens for Better Env’t, 523 U.S. 83, 89 (1998). These jurisdictional grants are
5 limited and only include certain categories of cases. Wachovia Bank, N.A. v. Schmidt, 546 U.S.
6 303, 316 (2006). Subject-matter jurisdiction defines the scope of cases the Court has authority to
7 hear. Lightfoot v. Cendant Mortg. Corp., ___ U.S. ___, 137 S.Ct. 553, 560 (2017). Without such
8 jurisdiction, the Court may not adjudicate the rights of the parties.

9 Most often, the Court attains subject-matter jurisdiction by one of two avenues: federal-
10 question or diversity jurisdiction under 28 U.S.C. §§ 1331 & 1332.¹ The party requesting relief
11 bears the burden of proving jurisdiction. Kingman Reef Atoll Inv.s, L.L.C. v. United States, 541
12 F.3d 1189, 1197 (9th Cir. 2008). Section 1331 extends federal jurisdiction to any case or
13 controversy “arising under the Constitution, laws, or treaties of the United States.” Whether a
14 case “arises under” federal law, however, is not always clear. Originally, the Supreme Court
15 extended federal-question jurisdiction to any case where federal law formed a mere “ingredient
16 of the original cause [of action].” Osborne v. Bank of U.S., 22 U.S. 738, 823 (1824). But over
17 time, the Supreme Court has significantly narrowed the contours of federal-question jurisdiction.
18 As it stands, federal-question jurisdiction requires one of two conditions, either: (1) federal law
19 expressly created the plaintiff’s cause of action or (2) resolution of the plaintiff’s claim would
20 require the Court to answer a “substantial question of federal law.” Franchise Tax Bd. v. Constr.
21 Laborers Vacation Trust, 463 U.S. 1, 27–28 (1983). Absent these conditions, the Court does not
22 have subject-matter jurisdiction and must dismiss.

23 This claim meets neither condition. The Court turns first to whether federal law creates
24 American Strategic’s cause of action. The allegations of American Strategic’s well-pleaded
25 complaint form the basis for its assertion of subject-matter jurisdiction. Id. at 9–10. Importantly,
26 only the plaintiff’s pleaded causes of action inform the Court’s jurisdictional inquiry. Taylor v.
27 Anderson, 234 U.S. 74, 75–76 (1914). By contrast, the defendant’s potential defenses—whether
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¹ American Strategic does not assert diversity jurisdiction under 28 U.S.C. § 1332.

1 arising under federal or state law—are irrelevant to determining subject-matter jurisdiction.
2 Beneficial Nat. Bank v. Anderson, 539 U.S. 1, 6 (2003). In its complaint, American Strategic
3 alleges that this Court has subject-matter jurisdiction “pursuant to 28 U.S.C. § 1331 in that Title I
4 of the Labor-Management Reporting and Disclosure Act of 1959, creates a ‘bill of rights’ for
5 union members, protecting their rights to speak, assemble, and have due process protection
6 against unfair union discipline.” ECF No. 1, at 2 ¶ 6. But none of American Strategic’s requested
7 declarations implicate that Act. The complaint requests the following declaratory relief:

- 8
- 9 1. A declaration that Ms. Dyess’s 505-day delay in notifying American Strategic of her
lawsuit and default judgment eliminates any coverage obligation under the policy;
- 10 2. A declaration that Ms. Dyess’s actions in the underlying law suit were “intended acts”
that are expressly excluded under the policy;
- 11 3. A declaration that the mental-abuse claims against Ms. Dyess are excluded under the
policy;
- 12 4. A declaration that any bodily injury claim against Ms. Dyess in the state-court case
arose out of Ms. Dyess’s business or professional activities, which are excluded from
13 coverage under the policy;
- 14 5. A declaration that Ms. Dyess’s actions giving rise to her state court lawsuit fall under
the policy’s “personal injury exclusion for intended acts” and are therefore excluded
15 from coverage;
- 16 6. A declaration that any personal injury claim arising out of Ms. Dyess’s oral or written
publications is excluded from coverage under the policy;
- 17 7. A declaration that that any personal injury claims in Ms. Dyess’s defamation suit
arose out of her business interests and are excluded from coverage under the policy;
18 and
- 19 8. A declaration that the policy does not require American Strategic to continue its
defense of Ms. Dyess in the state court action.
20

21 Conspicuously absent from American Strategic’s complaint is any allegation that its current
22 claims for declaratory relief were created by federal statute or otherwise arise under federal law.

23 Admittedly, Ms. Dyess’s state-court case likely implicates the union member’s bill of
24 rights that the complaint alludes to. See 29 U.S.C. §§ 411 and 412 (creating a private civil action
25 for “any person whose rights secured by [section 411] have been infringed”). This, however,
26 does not vest the Court with subject-matter jurisdiction for two reasons. First, American
27 Strategic is not a “person whose rights . . . have been infringed” under § 412. Thus, § 412 does
28 not create a cause of action for plaintiffs like American Strategic. In fact, Ms. Dyess has a

1 stronger claim to a right of action under § 412 than does American Strategic because she is the
2 union member who made statements arguably protected by § 411. And second, American
3 Strategic is not suing under § 412 to begin with. It is suing for declaratory relief that it need not
4 defend an insured in a corresponding state-court action that might involve that statute. In
5 essence, its claim boils down to a contract dispute, which is governed by state law. As such,
6 federal law does not create American Strategic's cause of action.

7 Likewise, American Strategic's complaint fails to demonstrate that resolution of its
8 claims would require the Court to answer a substantial question of federal law. There is a
9 "special and small category" of cases where federal jurisdiction lies despite the absence of a
10 federally created cause of action. Gunn v. Minton, 568 U.S. 251, 258 (2013). To fit this niche of
11 state-law cases, the complaint must demonstrate that resolution of the plaintiff's state-law claim
12 would require the Court to answer a federal question that is both substantial and vital to the
13 national interest. Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg., 545 U.S. 308, 310
14 (2005). This duty-to-defend case does not fit that narrow class of cases. A dispute over the rights
15 and obligations under an insurance policy is merely a contract dispute between the insurer and its
16 insured. Benchmark Co. v. Sparks, 254 P.3d 617, 621 (Nev. 2011). To resolve such a dispute, the
17 Court will draw on general, state-law contract principles. The Court sees no substantial federal
18 question embedded in American Strategic's request for declaratory relief. Nor does the national
19 interest demand a federal forum for this type of dispute. As a result, American Strategic's claim
20 does not arise under federal law, and the Court does not have subject-matter jurisdiction.

21 **III. Conclusion**

22 Accordingly, it is HEREBY ORDERED that American Strategic's Complaint for
23 Declaratory Relief (#1) is **DISMISSED**.

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25 Dated this 6th day of December, 2018.



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Kent J. Dawson
United States District Judge